

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL H.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C20-5717-BAT

**ORDER AFFIRMING THE  
COMMISSIONER’S FINAL DECISION  
AND DISMISSING THE CASE WITH  
PREJUDICE**

Plaintiff appeals the denial of his application for Disability Insurance Benefits. He contends the ALJ erroneously assessed residual functional capacity (“RFC”) by (1) rejecting the opinions of examining and non-examining physicians that plaintiff was limited to occasional handling, fingering, and feeling; and (2) declining to include a leg-elevation requirement despite plaintiff being the only source for such a restriction. Dkt. 17. As discussed below, the Court **AFFIRMS** the Commissioner’s final decision and **DISMISSES** the case with prejudice.

**BACKGROUND**

Plaintiff is currently 63 years old, attended some college, and has worked as an inventory clerk and an inventory audit clerk. Tr. 52, 139, 471. In December 2015, he applied for benefits, alleging disability as of May 1, 2014. Tr. 145–47. After his application was denied initially and on reconsideration, Tr. 145–75, the ALJ’s first unfavorable decision of September 2018, Tr.

1 179–94, was remanded by the Appeals Council in January 2019, Tr. 203–04. The ALJ  
2 subsequently held hearings in September 2019 and January 2020. Tr. 107–44.

3 In a February 2020 decision, the ALJ determined that plaintiff’s date last insured was  
4 December 31, 2019, and that he had the severe impairments of diabetes mellitus with  
5 neuropathy, degenerative disc disease of the lumbar spine, morbid obesity, asthma, adjustment  
6 disorder, posttraumatic stress disorder (“PTSD”), mild right and mild to moderate left ulnar  
7 entrapment neuropathy, and inflammatory arthritis. Tr. 19. The ALJ assessed an RFC of light  
8 work with additional postural, manipulative, and environmental limitations, including that  
9 plaintiff can *frequently* handle, finger, and feel bilaterally. Tr. 23. At step four of the sequential  
10 analysis, the ALJ determined that plaintiff was capable of performing past relevant work as an  
11 inventory audit clerk. Tr. 34–35. The ALJ therefore found plaintiff to be not disabled. Tr. 35. As  
12 the Appeals Council denied plaintiff’s request for review, the ALJ’s 2020 decision is the  
13 Commissioner’s final decision. Tr. 1–3.

#### 14 **DISCUSSION**

15 The Court will reverse the ALJ’s decision only if it was not supported by substantial  
16 evidence in the record as a whole or if the ALJ applied the wrong legal standard. *Molina v.*  
17 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). The ALJ’s decision may not be reversed on account  
18 of an error that is harmless. *Id.* at 1111. Where the evidence is susceptible to more than one  
19 rational interpretation, the Court must uphold the Commissioner’s interpretation. *Thomas v.*  
20 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

21 Plaintiff contends that the medical evidence was misevaluated because the ALJ assessed  
22 an RFC that (1) limited plaintiff to frequent handling, fingering, and feeling instead of to  
23 occasional handling, fingering, and feeling; and (2) did not include the requirement that plaintiff

1 be permitted to elevate his legs several times during the workday. The Court finds that plaintiff  
2 has failed to demonstrate that the ALJ's decision was unsupported by substantial evidence or  
3 involved a misapplication of the law.

4 **1. Limitation to Frequent Handling, Fingering, and Feeling**

5 Plaintiff contends that the ALJ erred by determining that plaintiff had the RFC to perform  
6 *frequent* handling, fingering, and feeling instead of *occasional* handling, fingering, and feeling  
7 without citing specific and legitimate reasons to discount the opinion of examining physician  
8 Malini Balakrishnan, M.D., and without referring to specific evidence to discount the opinion of  
9 non-examining physician Gordon Hale, M.D. The Court disagrees.

10 For applications filed before March 27, 2017, as this one was, more weight should  
11 generally be given to the opinions of examining doctors than to the opinions of doctors who do  
12 not examine or treat the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995); *see* 20  
13 C.F.R. § 404.1527(c)(2); SSR 96-2p (rescinded by Federal Register Notice Vol. 82, No. 57, page  
14 15263, effective March 27, 2017). Here on the question of handling, fingering, and feeling the  
15 ALJ favored the opinion of non-examining agency physician, Norman Staley, M.D., over the  
16 opinions of examining physician Dr. Balakrishnan and of non-examining physician Dr. Hale.  
17 The Court therefore examines whether the examining opinion of Dr. Balakrishnan was  
18 discounted for specific and legitimate reasons that are supported by substantial evidence, *Lester*,  
19 81 F.3d at 830; and whether the non-examining opinion of Dr. Hale was discounted with  
20 reference to specific evidence in the medical record, *Sousa v. Callahan*, 143 F.3d 1240, 1244  
21 (9th Cir. 1998). "The opinion of a nonexamining physician cannot by itself constitute substantial  
22 evidence that justifies the rejection of the opinion of . . . an examining physician . . . ." *Lester*, 81  
23 F.3d at 830.

1           The ALJ cited two reasons to discount the opinions of examining physician Dr.  
2 Balakrishnan and non-examining physician Dr. Hale: (1) inconsistency with the medical record;  
3 and (2) inconsistency with daily activities. In March 2016, Dr. Balakrishnan examined plaintiff  
4 and opined that he was able to perform light work subject to additional postural, manipulative,  
5 and environmental limitations, which included a restriction to occasional reaching, handling,  
6 fingering, and feeling. Tr. 857–62. The ALJ gave partial weight to this decision because it was  
7 mostly consistent with plaintiff’s ability to perform a wide variety of activities, including most  
8 activities of daily living and providing guitar lessons. Tr. 31 (citing Tr. 63–65, 479–86). The ALJ  
9 also noted that numerous records showed generally unremarkable physical exam findings. Tr. 31  
10 (citing Tr. 759, 798, 809, 812, 818, 830, 841, 961, 977, 1005, 1142, 1648). The ALJ generally  
11 gave great weight to Dr. Hale’s July 2016 reconsideration opinion because it confirmed Dr.  
12 Staley’s original March 2016 opinion. Tr. 30. The ALJ discounted Dr. Staley’s assessment that  
13 plaintiff was limited to occasional manipulation because it was inconsistent with the generally  
14 unremarkable physical exams and plaintiff’s activities, i.e., most activities of daily living and  
15 guitar lessons. Tr. 30 (citing, *inter alia*, Tr. 63–65, 479–86, 818, 871, 882, 893). Although Dr.  
16 Staley and Dr. Hale both reviewed Dr. Balakrishnan’s examining opinion, only Dr. Hale  
17 accepted the limitation to occasional manipulation. *Compare* Tr. 153 *with* Tr. 169.

18           First, the ALJ discounted the opinions of Drs. Balakrishnan and Hale because the  
19 unremarkable physical examinations were more consistent with a limitation to frequent  
20 manipulation rather than to occasional manipulation. For example, the ALJ cited a January 2016  
21 physical examination in which a “motor exam demonstrated normal strength in the upper and  
22 lower extremities both proximally and distally” and “no sensory deficits” were noted. Tr. 893;  
23 *see* Tr. 30. The ALJ also cited to an April 2016 physical examination that employed EMG and

1 nerve conduction studies to evaluate plaintiff's bilateral upper extremities. Tr. 30 (citing Tr.  
2 871). Muscle bulk and symmetry were normal in the bilateral upper extremities; manual muscle  
3 testing showed 5/5 in deltoids, biceps, triceps, wrist extensors, wrist flexors, thumb abductors,  
4 and finger abductors; muscle stretch reflexes in a normal range; sensory testing to pinprick  
5 normal in the distal upper extremities; electrophysiological evidence of mild bilateral median  
6 entrapment neuropathy across the carpal tunnel region; and no electrophysiological evidence of  
7 peripheral neuropathy in the nerves of the upper extremities. Tr. 870–71. Similarly, the ALJ cited  
8 clinical examinations in 2019 that showed mild to moderate deficits in the upper extremities that  
9 supported light work with frequent handling, fingering, and feeling. Tr. 28. For example, despite  
10 allegations of rheumatoid arthritis, laboratory testing showed a negative rheumatoid factor; an  
11 episode of left hand trigger finger resolved after stretching his fingers; mild to moderate  
12 tenderness in right hand digits 2-5 with puffiness and limited range of motion at IP joints; and no  
13 signs of trigger fingers in both hands. Tr. 1786–87. In January 2019, there was no radiographic  
14 evidence for inflammatory arthritis while tiny osteophytes at the IP joints of both thumbs was  
15 consistent with mild osteoarthritis. Tr. 1739. In May 2018, plaintiff told his physician that when  
16 using Humira, synovitis of his hands and wrists improved such that when he stopped taking  
17 Humira while undergoing a dental implant procedure, he was doing well for five months before  
18 experiencing some joint swelling. Tr. 1699.

19       Second, the ALJ discounted the opinions of Drs. Balakrishnan and Hale because  
20 plaintiff's daily activities were more consistent with a limitation to frequent manipulation rather  
21 than to occasional manipulation. In September 2015, plaintiff sought treatment for pain in his  
22 hands because he had an upcoming concert as a guitarist, and the clinician noted that the  
23 swelling "was not that bad" such that a minor dose of Lasix would help. Tr. 810. A few weeks

1 later, plaintiff sought relief for pain in his right mid-back after having carried a 50-pound  
2 speaker; the clinician noted 4+ to 5/5 manual motor testing in the upper extremities, except for a  
3 4/5 for the right shoulder; and the treatment goals were for plaintiff to have manual motor testing  
4 of 5/5 and the ability to play guitar without pain within 8 weeks. Tr. 779. Moreover, plaintiff  
5 testified in the hearings and noted in his functional report that he played guitar regularly and  
6 taught guitar to his nieces. Tr. 63–65, 89–90, 482.

7         The ALJ’s reasons to discount the opinions of Drs. Balakrishnan and Hale regarding  
8 manipulative restrictions were specific and legitimate and referred to specific evidence in the  
9 record: inconsistency with generally unremarkable physical examinations and plaintiff’s daily  
10 activities. Although plaintiff advances a plausible interpretation of the medical record, he has not  
11 demonstrated that the ALJ’s interpretation of the evidence was unreasonable. *See Thomas*, 278  
12 F.3d at 954. Moreover, although plaintiff argues that the ALJ should accept his testimony that his  
13 playing and teaching of guitar is substantially restricted by pain, plaintiff has not challenged the  
14 ALJ’s discounting of that testimony as inconsistent with the medical evidence.

15         The ALJ supported her decision that plaintiff had the RFC to perform frequent handling,  
16 fingering, and feeling instead of occasional handling, fingering, and feeling, with substantial  
17 evidence and in accordance with the law.

## 18         **2. Leg-Elevation Requirement**

19         Plaintiff contends that the ALJ should have assessed an RFC that included a leg-elevation  
20 requirement because plaintiff testified to such a restriction and it was supported by the medical  
21 evidence. The Court disagrees.

22         It is undisputed that no physician has opined a requirement that plaintiff be allowed to  
23 elevate his legs several times during a workday. Plaintiff relies instead on his own testimony and

1 medical examination notes referring to leg swelling. *See, e.g.*, Tr. 810, 828, 830, 1351, 1358.  
2 Plaintiff has failed, however, to challenge the ALJ's decision to discount plaintiff's symptom  
3 testimony based on a conflict with unremarkable medical findings, including normal gait,  
4 negative straight leg raising, and no acute distress. Tr. 25–29, *see* Tr. 808–09, 818, 871, 881,  
5 909, 1141–43. Having reasonably rejected plaintiff's symptom testimony as inconsistent with the  
6 medical evidence, the ALJ did not harmfully err by declining to assess an RFC that included an  
7 imperative to permit leg elevation based on plaintiff's testimony of needing such a restriction.

8 The ALJ did not err as a matter of fact or law by declining to assess an RFC that included  
9 a leg-elevation requirement that no physician opined was necessary.

### 10 CONCLUSION

11 For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is  
12 **DISMISSED** with prejudice.

13 DATED this 20th day of May, 2021.

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16 BRIAN A. TSUCHIDA  
17 United States Magistrate Judge  
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